

A/C Home Improvement and the Utah Property and Casualty Insurance Guaranty Association (referred to jointly as "A/C" hereafter) ask the Appeals Board of the Utah Labor Commission to review Administrative Law Judge La Jeunesse's decision regarding A/C's liability for workers' compensation benefits awarded to W. F. under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Annotated).

The Appeals Board exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12 and Utah Code Ann. §34A-2-801(3).

BACKGROUND AND ISSUE PRESENTED

Mr. F. fractured his right foot on November 15, 1996, while working for A/C. On November 28, 1998, he reinjured the foot while incarcerated in the Utah State Prison. On December 20, 1998, his right leg was amputated below the knee.

It has been established that Mr. F.'s right foot never healed after his work accident and that the work accident medically caused the amputation. Consequently, A/C is liable for the medical expenses and disability compensation due Mr. F. under Utah's workers' compensation system. However, Mr. F. has also received an \$80,000 settlement from the State of Utah, presumably for negligent treatment of Mr. F.'s injury while he was incarcerated.

Pursuant to §34A-2-106(5) of the Utah Workers' Compensation Act, employers and their insurance carriers are entitled to offset third-party settlements, such as Mr. F.'s settlement from the State of Utah, against their workers' compensation liability. In this matter, Judge La Jeunesse concluded that A/C Home Improvement had already exhausted its right of offset against Mr. F.'s settlement, but that the Utah Property and Casualty Association was entitled to a remaining offset of \$23,684.10. A/C and the Association request Appeals Board review of Judge La Jeunesse's decision.

DISCUSSION AND CONCLUSIONS OF LAW

A/C and the Association do not challenge Judge La Jeunesse's conclusion that Mr. F. is entitled to workers' compensation benefits for the work-related injury to and amputation of his lower right leg. What is in dispute is the extent to which the liability of A/C and the Association for those benefits is offset by Mr. F.'s \$80,000 third party settlement.

The Appeals Board has carefully reviewed the record in this matter but finds it inadequate to resolve the issues raised by A/C and the Association. For example, the stipulated facts fail to reveal whether the terms of Mr. F.'s settlement with the State of Utah preclude the state from seeking repayment of Mr. F.'s medical expenses. The parties have not addressed whether §31A-28-203(4)(b)(i)'s subrogation provisions apply to medical expenses paid by the State of Utah and Medicaid on behalf of Mr. F.. Finally, the parties have not addressed the computations required by §34A-2-106(5) of the Utah Workers' Compensation Act, as interpreted by the Utah Supreme Court in Esquivel et al. v. Labor Commission, 7 P.3d 777 (Utah 2000).

Because the Appeals Board cannot resolve this dispute with so little information, the Appeals Board remands this matter to Judge La Jeunesse for such further proceedings as he deems appropriate to establish an adequate record of the relevant facts and the parties' respective legal arguments. Judge La Jeunesse will then issue a new decision based upon such facts and arguments. Any party dissatisfied with that decision will then be entitled to seek review by the Appeals Board or Labor Commissioner.

ORDER

The Appeals Board remands this matter to Judge La Jeunesse for further proceedings consistent with this decision. It is so ordered.

Dated this 31st day of January, 2005.

Colleen S. Colton, Chair
Patricia S. Drawe
Joseph E. Hatch